

**STATE OF MICHIGAN
IN THE SUPREME COURT**

Appeal from the Michigan Court of Appeals

Donofrio, PJ., O'Connell and Servitto, JJ.

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,**

**Supreme Court
No. 131994**

vs.

**Court of Appeals
No. 259532**

**TRUMON DONTAE CANNON
Defendant-Appellant.**

**Circuit Court Case
No. 04-024226-FC-3**

BRIEF ON APPEAL – APPELLEE

ORAL ARGUMENT REQUESTED

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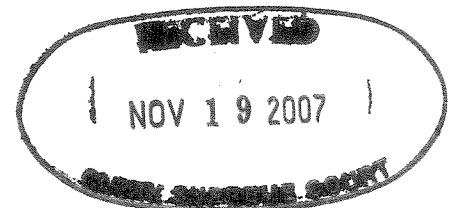


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STATEMENT OF JURISDICTION

The People agree with the Defendant-Appellant¹ that this Court now has jurisdiction in this matter.

¹ (Appellant's Brief, iii)

COUNTERSTATEMENT OF QUESTION INVOLVED

- I. Did the trial court abuse its sentencing discretion in scoring fifteen points for OV 10, where the record evidence showed that the Defendant and his accomplices waited until they had only a minimal number of people to deal with before launching the robbery of the restaurant?

The trial court answered “NO”.

The Court of Appeals answered “NO”.

The Plaintiff-Appellee contends that the answer is “NO”.

The Defendant-Appellant contends that the answer is “YES”.

COUNTERSTATEMENT OF FACTS

Trumon Dontae Cannon, the Defendant-Appellant, was tried by a Saginaw County Circuit Court jury in September of 2004 on charges of armed robbery, conspiracy to commit armed robbery, and possession of a firearm during the commission of a felony. (1b) Tried with him were his two codefendants, Larry Lajune Hibler and Maurice DeWayne Mayes.² (1b)

On September 24, after seven days of trial, the Defendant was found guilty of conspiracy, but he was acquitted of armed robbery and of felony firearm.³ (40b) On November 23, 2004, the Defendant was sentenced on that conviction by the Honorable Lynda L. Heathscott, Circuit Court Judge, to a prison term of 210 to 500 months, with credit for 307 days which he had previously served.⁴ (16a)

These convictions and sentences arose out of a robbery of a Burger King restaurant which took place during the evening of January 12, 2004. (18a) There were four people working there at the time of the robbery. (3b)

One of the four, Tameaka Brown, testified that she had happened to be looking outside when she saw four subjects approaching the restaurant, only one of whom entered immediately. (3b) She identified the Defendant as that person. (4b)

² Mr. Hibler and Mr. Mayes both faced additional charges of felon in possession of a firearm and of resisting and obstructing a police officer. (2b)

³ Codefendant Hibler was convicted of all of the charges he faced, except for that of resisting an officer; Codefendant Mayes was convicted of all of his charges, but for the felon in possession count and its corresponding felony-firearm count. (40b)

⁴ The longest minimum sentence for each of the two codefendants was 270 months. (42b, 43b)

He appeared nervous, paced about, and did not order right away. (4b) He was not wearing a mask. (12b) He was the only “customer” inside of the Burger King at the time of the offense. (10b, 13b)

A few moments later, two other subjects entered and jumped over the counter. (4b) The one Ms. Brown identified as Codefendant Hibler had a cream-colored scarf over his mouth and a gun in his hand. (5b) At first he threatened to kill the employees if they did not open the safe, but then allowed that he had no such intention. (6b) It became academic in any event when the other subject who had jumped over the counter was observed emptying the safe after another employee had opened it for him. (6b, 9b) He had a gun, too, but he kept it in the back of his waistband throughout the robbery. (6b, 11b) His face was also probably covered. (6b, 12b)

Meanwhile, one of the other employees, Marcus Harrison, had fled into the freezer and called the police on a cordless phone from that location. (7b) Mr. Hibler again threatened to shoot the other employees if Mr. Harrison did not come out of the freezer, but Harrison nevertheless refused to exit. (6b, 7b) For his part, the Defendant kept looking out the window, while the other two subjects continued emptying the safe. (7b) When, however, law enforcement personnel began to arrive, all three of them left the premises through a side door. (8b)

The restaurant was equipped with a video security system. (8b) Through that system the robbery was recorded, and that recording was shown to the jury. (8b) That presentation was narrated by Ms. Brown. (8b)

Maudena Scott testified that she was the assistant manager in charge that night. (14b) Ms. Scott was able to identify the Defendant, who did not wear a mask, as the subject at the counter. (14b, 16b) She estimated very roughly that as much as \$1,400 had been taken by the robbers. (15b)

Sergeant Paul Crane of the City of Saginaw Police Department testified that he and an Officer Salazar were in separate vehicles some five blocks from the crime scene when they heard a broadcast from Central Dispatch that a robbery was underway at the Burger King. (17b) When he arrived at the crime scene a minute or two later, the sergeant observed a subject running south behind some doctors' offices near the Burger King, and began to pursue him. (17b, 18b) The area behind the buildings is marshy and field-like. (18b)

Sergeant Crane soon saw two other officers struggling with a suspect near some railroad tracks, and he helped to subdue the man; Crane then noticed that a little further south two sheriff deputies had taken a second person into custody. (19b) Crane next heard that the third suspect had been observed running west, and so he took steps to assist in apprehending him. (19b, 20b) When the sergeant came upon him a few minutes later, that subject had already been taken into custody by two other officers. (20b, 21b) Crane proceeded to photograph objects which appeared to be physical evidence of the crime. (21b)

Officer James Hildebrant of the City of Saginaw Police Department testified that when he arrived at the crime scene he observed two subjects running south along some railroad tracks. (22b) The officer identified Defendant and Codefendant

Mayes as the two subjects. (23b) Codefendant Mayes was the one who struggled and had to be subdued with the assistance of Sergeant Crane and another officer; Defendant for his part stopped as soon as he was ordered to do so and did not resist. (24b, 25b) A total of \$1,207.00 in cash was taken from Mr. Mayes's pockets. (24b)

Officer Terry Williams of the Saginaw Township Police Department testified that on the day in question he was in the City of Saginaw looking for a suspect and his vehicle in connection with an incident which had occurred in the Township. (26b) When, however, he heard the broadcast about the armed robbery, he responded thereto by driving to the Burger King. (26b)

Shortly after he arrived, Officer Williams observed a person jumping over a fence. (26b) The officer's response to that observation was to pursue the subject. (26b) That pursuit led to the discovery of a man in a playhouse. (26b) The man refused to comply with the officer's directions, and a struggle ensued. (27b) With the assistance of another officer, Officer Williams was able to subdue and handcuff the subject, whom he was able to identify as Codefendant Hibler. (27b, 28b) Williams observed rolls of money in the vicinity of the playhouse. (28b) Officer Jeffrey Wenzel of the City of Saginaw Police Department testified that Mr. Hibler had, among other things, thirty-two quarters in his pockets when he went through them. (29b, 30b)

None of the defendants presented any proofs, but they all made motions for directed verdicts of acquittal, all of which were denied. (31b-34b)

In arguing during his closing summation that Defendant was guilty of the

charges the People had brought against him, the prosecutor relied primarily upon Defendant's behavior as it was depicted in the security tape, behavior which indicated that he had assisted in the robbery by acting as a lookout. (35b-37b) In addition, the prosecutor pointed to the evidence that Defendant had left the restaurant with his codefendants, and that he was apprehended running along the railroad tracks, abreast of Codefendant Mayes. (36b) For his part, Defendant's trial attorney conceded that Defendant was present at the time of the robbery, but nothing more—Defendant was merely present and merely very scared. (38b-39b) The defense, like the prosecution, found support for their position in the security video. (39b)

After jury instructions and jury deliberations, the Defendant and his codefendants were convicted in the manner described on page one of this statement. Defendant subsequently filed a motion for new trial which was briefed, argued, and denied. (4a)

Without going into detail⁵, the People would represent to the Court that at sentencing there was extensive discussion of numerous sentencing guidelines variables, one of which was OV 10. (12a-15a) The sentencing court decided to assess fifteen points under that variable. (15a) The upshot of the court's scoring decisions was that the applicable cell was found to be that of D 4, which carries a range of 126 to 210 months. (50b) Defendant's minimum sentence of 210 months is thus at the very top of the guidelines range. (16a)

The Defendant exercised his right of appeal, and a Court of Appeals opinion

⁵ See, however, p 17, *infra*.

eventually followed, in which the Defendant's conviction and sentence were affirmed. (18a-22a) In affirming, the Court addressed the scoring of OV 10, and concluded that the defense had "fail[ed] to show that the trial court committed clear error in scoring fifteen points against defendant on OV 10." (21a-22a)

Defendant then filed an application for leave to appeal in this Court, which was granted on May 23, 2007,

"limited to the issues of the scope of predatory conduct defined in Offense Variable 10, MCL 777.40(3)(a), and whether the trial court properly assessed 15 points for predatory conduct in this case. The parties shall address whether predatory conduct is limited to exploitation of a 'vulnerable victim' and, if so, what factors may be considered in determining whether a victim is 'vulnerable.'" (51b)

Defendant filed his brief on September 11, and the People are now filing theirs.

With that, the People would conclude their counterstatement of facts by pointing out that additional facts are stated *infra*, in the argument section of this brief, as part of an effort aimed at providing the Court with adequate responses to the questions the Court has directed the parties to address.

ARGUMENT

The trial court did not abuse its sentencing discretion in scoring fifteen points for OV 10, where the record evidence showed that the Defendant and his accomplices waited until they had only a minimal number of people to deal with before launching the robbery of the restaurant.

A. *Issue Presented by the Court*

The Court fundamentally asks the parties to address “whether the trial court properly assessed 15 points for predatory conduct in this case.” (51b)

B. *Preservation of Issue*

Defendant’s trial attorney objected to the scoring of OV 10 at sentencing. (12a, 15a)

C. *Standard of Review*

Proper construction or application of statutory sentencing guidelines presents a question of law that is reviewed de novo.⁶ A trial court’s factual findings at sentencing, however, are reviewed for clear error.⁷ And,

“[a] sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.”⁸

D. *Pertinent Legal Principles*

OV 10 scores points for conduct involving the exploitation of a vulnerable

⁶ *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000).

⁷ *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2004), *aff’d* 473 Mich 399; 702 NW2d 530 (2005).

⁸ *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

victim.⁹ The statute from which OV 10 is derived, MCL 777.40, reads as follows:

(1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) Predatory conduct was involved..... 15 points

(b) The offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status..... 10 points

(c) The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious..... 5 points

(d) The offender did not exploit a victim's vulnerability..... 0 points

(2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.

(3) As used in this section:

(a) "Predatory conduct" means preoffense conduct directed at a victim for the primary purpose of victimization.

(b) "Exploit" means to manipulate a victim for selfish or unethical purposes.

⁹ MCL 777.40(1).

(c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.

(d) "Abuse of authority status" means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher.

Statutory interpretation principles

As this Court has repeatedly recognized, the goal when interpreting a statute is to ascertain and give effect to the intent of the Legislature - looking first to the plain language of the statute to determine the legislative intent that may reasonably be inferred from the words used in the statute.¹⁰ The words used by the legislature must be given their common ordinary meaning.¹¹ As this Court has also recognized, every word must be presumed to have some meaning, and the Court should avoid any construction that would render any part of the statute surplusage or nugatory.¹² Thus, effect should be given to each provision of the statute so that the language of a statute is considered in light of the express language found in

¹⁰ *People v Chavis*, 468 Mich 84, 92; 658 NW2d 469 (2003); *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002); *People v McIntire*, 461 Mich 147, 152; 599 NW2d 102 (1999).

¹¹ *See McIntire*, *supra* at 153; MCL 8.3a.

¹² *Mayor of the City of Lansing v Michigan Pub Service Comm*, 470 Mich 154, 168; 680 NW2d 840 (2004); *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1991).

other sections of the same statute.¹³ If the language is clear and unambiguous, no further construction is necessary, and the statute is enforced as written.¹⁴

Ambiguity is a finding of last resort.¹⁵ But where ambiguity is found, such as where one part of a statute points to one conclusion, while another part points elsewhere, the purpose and context of the statute may be considered.¹⁶ Where there is ambiguity, the court may look outside the statute to discern the legislature's intent.¹⁷

OV 10–MCL 777.40

Where a defendant's conduct is deemed to have been predatory, OV 10 is scored at 15 points; however, if the conduct was not predatory, but where the defendant exploited the victim's youth, a domestic relationship, or a sleeping victim, OV 10 should be scored at 10 points. MCL 777.40(1) requires that the trial court score the highest number of points properly assignable under OV 10.

The People submit that the scope of “predatory conduct” is quite broad—it is defined by the variable as “preoffense conduct directed at a victim for the primary purpose of victimization.”¹⁸ For example, watching and waiting for a victim are

¹³ *Borchard-Ruhland*, *supra* at 285; *People v Hall*, 391 Mich 175, 190; 215 NW2d 166 (1974).

¹⁴ *Chavis*, *supra* at 92; *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001).

¹⁵ *Lansing v MPSC*, *supra* at 165, n 6.

¹⁶ *McIntire*, *supra* at 156, n 9.

¹⁷ *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999).

¹⁸ MCL 777.40(3)(a).

factors of predatory conduct.¹⁹ The variable does not state that the pre-offense conduct be directed at a specific victim chosen before the offense occurs. Rather, the variable states that the pre-offense conduct be “directed at a victim”.²⁰

Although robbery contains an element of theft, it is primarily an assaultive crime.²¹ Indeed, it is within the category of crimes against a person for purposes of the sentencing guidelines.²²

The timing and location of assaultive conduct is probative of whether a defendant engaged in predatory conduct.²³ A score of 15 points for OV 10 was upheld in *Witherspoon*, where there was evidence that the defendant watched the nine-year-old victim and waited for an opportunity to be alone with her in an isolated location in her home to commit a sexual assault. A score of 15 points was upheld in *Kimble*, where there was evidence that the defendant and his accomplices followed the victim home and, after watching the victim pull into the driveway, shot the victim for the purpose of stealing her car to get its wheel rims.²⁴

¹⁹*People v Apgar*, 264 Mich App 321, 330; 690 NW2d 312 (2004), lv den 479 Mich 853 (2007); see also *People v Kimble*, 252 Mich App 269, 274-275; 651 NW2d 798 (2002), aff’d 470 Mich 305 (2004).

²⁰ MCL 777.40(3)(a).

²¹ *People v Hendricks*, 446 Mich 435, 449; 521 NW2d 546 (1994).

²² MCL 777.5(a); MCL 777.16y. Since Defendant was convicted of conspiracy to commit armed robbery, but not of armed robbery itself, his crime falls into the public safety group. (47b)

²³ *People v Witherspoon*, 257 Mich App 329, 336; 670 NW2d 434 (2003); see also *Apgar*, *supra* at 330.

²⁴ *Kimble*, *supra* at 274-275.

A score of fifteen points was also upheld in *People v Cox* pursuant to the following factual scenario:

The victim testified that he had been to defendant's house five or ten times, and that defendant had visited him at his foster home. The investigating officer testified that defendant admitted harboring the victim as a runaway from a foster home. In addition, defendant's presentence investigation report indicates that the victim viewed pornographic material at defendant's home and that a large amount of pornographic material was found in defendant's home, including a videotape of a 16-year-old boy dancing and drinking alcohol in defendant's bedroom, and sleeping nude.²⁵

The People would also note that there is nothing to indicate that the victim in *Kimble*, twenty-three-year-old Monique Trotty, had any of the characteristics listed elsewhere in the statute, such as mental and/or physical disabilities, which rendered her inherently vulnerable—it was the following of her until she was in a position where neither she nor anyone else could defend her which justified a finding of predatory conduct and the consequent scoring of fifteen points.²⁶ It is thus in the sense then that a victim is attacked only after he or she enters into a situation in which he or she is at a distinct disadvantage in warding off the perpetrator's assault that a victim need be “vulnerable” for purposes of scoring OV 10 fifteen points for predatory conduct.

The Court of Appeals has stated that

“The wisdom of a statute is for the determination of the Legislature, and the law must be enforced as written. *Smith v Cliffs on the Bay Condo. Ass'n*, 463 Mich 420, 430, 617 NW2d 536 (2000). ‘A court may not inquire into the knowledge, motives, or methods of the Legislature,’

²⁵ *People v Cox*, 268 Mich App 440, 455; 709 NW2d 152 (2005).

²⁶ *Kimble*, *supra* at 274-275.

Fowler v Doan, 261 Mich App 595, 599, 683 NW2d 682 (2004), and may not impose a construction on a statute on the basis of a policy decision different from that chosen by the Legislature, *Robertson v Daimler Chrysler Corp.*, 465 Mich 732, 752, 641 NW2d 567 (2002).”²⁷

Justice Young further elucidated this approach to statutory construction in his dissent in *G.C. Timmis & Co. v Guardian Alarm Co.*²⁸:

“Over the past several years, a majority of this Court has consistently adhered to the philosophy that the plain language of a statute should be applied without regard to the ‘legislative wisdom’ of the outcome. This philosophy is grounded in the belief that separation of powers principles preclude the judiciary from engaging in judicial legislation or otherwise ‘saving’ the citizenry from the actions of its duly elected legislators.”

E. Relevant Facts and Discussion

In the People’s view, the Court of Appeals opinion in this case persuasively demonstrates that scoring OV 10 at fifteen points was correct. The Court quoted the pertinent factual findings from *Kimble, supra*, and then went on to show that the similar factual pattern in the instant case supports the challenged scoring:

“The evidence suggests that defendant and his coconspirators selected a time, place, and manner in which to commit this robbery to maximize the vulnerability of the victims and minimize their chances of getting caught. The trial court heard evidence that the offenders planned the crime in advance, parked their car alongside the restaurant in a separate parking lot where they would not be seen, selected defendant to act as the lookout, and waited until the restaurant was devoid of customers so that the employees were alone, in order to facilitate the commission of the offense. Accordingly, defendant’s acts satisfied the criteria for predatory conduct within the meaning of the statute. Defendant thus fails to show that the trial court commit clear error in scoring fifteen points against defendant on OV 10.” (22a)

²⁷ *Shelby Charter Twp v Papesh*, 267 Mich App 92, 107; 704 NW2d 92 (2005).

²⁸ *G.C. Timmis & Co. v Guardian Alarm Co.*, 468 Mich 416, 420-422, 662 NW2d 710 (2003) (Dissenting Opinion by YOUNG, J.; citations omitted.)

In addition, the trial court judge herself called attention to the circumstance that Defendant was the one in a position to call off this criminal undertaking, but he failed to do so, making him the most culpable of the three. (14a-15a) Thus, since the evidence supported the scoring of fifteen points, the trial court was *required* to assess that number of points.²⁹

As for whether the conduct summarized by the Court of Appeals opinion was more egregious than the exploitation of a victim's size or disability, the People would primarily submit that that is not a proper concern of the courts. As Justice Young pointed out in the previously quoted excerpt from his dissent in *G.C. Timmis & Co.*, it is not the function of the courts to second-guess the policy decisions of the Legislature. Thus, since the Legislature has clearly decided that predatory conduct is worth five or ten more points than exploiting a victim's disability or smaller size or impairment, the courts should not question that decision.

In any event, the Legislature has provided a safety valve where it seems that the guideline scoring has missed the mark in a given case through providing a range within which the court can adjust the minimum sentence. In addition, if the range in question is deemed too narrow for an adequate adjustment, the court can depart therefrom "if the court has a substantial and compelling reason for that departure."³⁰ A finding that a "characteristic has been given inadequate or

²⁹ See MCL 777.40(1).

³⁰ MCL 769.34(3).

disproportionate weight”³¹ by the guidelines can provide grounds for a departure.

The People would go on to suggest that if the Legislature had provided the courts with an additional safety valve in the form of a right to reduce scoring on the basis that the conduct in question only minimally satisfied the requirements for scoring points under a given variable, that would have had the effect of substantially opening up divergences in scoring between cases and between judges, leading in turn to the undermining of one of the principal goals of the guidelines, the reduction of disparities in sentencing.³²

The People would further suggest that while predatory conduct by definition involves commission of a crime with a substantial opportunity to deliberate about it in advance, taking advantage of a victim’s disabilities and weaknesses is more characteristic of impulsive and anger-induced crimes. There are substantial reasons to believe that a calculating criminal is at least somewhat more deserving of punishment, and is more affected by the prospect of punishment than is the criminal who acts on the spur of the moment.

In all, the disposition of this scoring claim by the circuit court and the Court of Appeals was proper, and in line with the law the Court of Appeals has produced regarding the scoring of fifteen points for OV 10.³³

The People fail to perceive any material flaw in this body of jurisprudence,

³¹ MCL 769.34(3)(b).

³² *People v Garza*, 469 Mich 431, 434-435; 670 NW2d 662 (2003).

³³ See, e.g., *Apgar, supra*; *Witherspoon, supra*; *Kimble, supra*.

and they would therefore submit that this Court should endorse it, and perhaps elaborate upon it somewhat for the benefit of the bench and bar. In sum, there was no error in the scoring of fifteen points for OV 10 in this case, and so Defendant's sentence should not be disturbed.

The People would present as an alternative basis for reaching that same conclusion an argument that the Court of Appeals did err when it accepted Defendant's argument that OV 4, psychological injury to a victim, should have been scored at zero points. (21a) As the Court of Appeals opinion states,

“OV 4 provides that ten points are to be assessed if ‘[s]erious psychological injury requiring professional treatment occurred to a victim.’ MCL 777.34(1)(a). It also provides for a score of zero if ‘[n]o serious psychological injury requiring professional treatment occurred to a victim.’ MCL 777.34(1)(b).” (21a)

The Court of Appeals based its decision on OV 4 on a finding that there was a lack of evidence in the record to support an assessment of points. (21a) The People contend that that finding was erroneous, in that the record shows that the trial court's scoring of ten points for that variable was made basically through reference to having previously done so in Codefendant Mayes's case. (12a) At Mr. Mayes's sentencing the prosecutor pointed to the hysteria displayed on the tape of the 911 call, the victims' demeanor on the witness stand, and the fear of one victim to even come to court. (41b) The prosecutor offered to bring these individuals in to substantiate their trauma, but the court found it unnecessary to do so. (41b) Thus, unlike in the case the Court of Appeals relied upon³⁴, there is in the case *sub judice*

³⁴ That being *People v Hicks*, 259 Mich App 518, 534-535;675 NW2d 599(2003). (21a)

evidence to support the scoring of ten points for OV 4.³⁵

Were this Court to agree with the People, and restore the ten points under OV 4, the People calculate that the total offense variable score would then be sixty points, even without the fifteen points for OV 10. That total is based on the following scoring of the individual variables: OV 1—fifteen points (44b-45b); OV 3—zero points (45b); OV 4—ten points for the reasons just stated; OV 9—ten points (17a); OV 12—zero points (46b); OV 13—ten points (49b); OV 14—zero points (50b); OV 16—five points (48b); OV 18—zero points (17a); OV 19—ten points (50b); and OV 20—zero points (17a). Sixty points would leave the OV Level at IV, and resentencing would then be inappropriate.³⁶

E. Conclusion

The People thus ask this Honorable Court to grant no relief pursuant to this issue.

³⁵ Compare *Apgar*, *supra* at 329 (Opinion by GAGE, J.)

³⁶ See MCL 777.62 and *People v Francisco*, 474 Mich 82, 89, n 8; 711 NW2d 44 (2006). The People would note that if fifteen points were added in under OV 10, the OV total would then be seventy-five points and OV Level IV would still be the result. MCL 777.62.


SUMMARY AND RELIEF SOUGHT

Wherefore, the Plaintiff-Appellee respectfully requests that this Honorable Court affirm the Per Curiam Opinion of the Court of Appeals, which affirmed the Defendant-Appellant's conviction and sentence.

Respectfully submitted,

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